



DEPARTMENT OF STATE

Washington, D.C. 20520

AUG 19 1976

Dear Mr. Lynn:

In accordance with Executive Order 11030, as amended, there is transmitted herewith a proposed Executive order, together with seven copies, to implement the provisions of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94-329). That Act has substantially revised the provisions of the Foreign Assistance Act of 1961, as amended (hereinafter "the FAA"), relating to security assistance, and has made even more sweeping changes in the legislation governing foreign military sales and exports of commercially sold military equipment, material and services. The new legislation extensively amends the Foreign Military Sales Act, which it redesignates the Arms Export Control Act (hereinafter "the AECA"), and incorporates therein provisions on munitions export control which supersede section 414 of the Mutual Security Act of 1954.

The enclosed draft Order amends Executive Order 10973, the principal instrument whereby functions vested in the President by the FAA are delegated to various Executive Branch officials. It also revokes Executive Order 11501, which delegates functions under the former Foreign Military Sales Act, and replaces it with a new set of delegations to implement the AECA.

The principal reason for proposing a new Executive order at this time is to delegate new functions vested in the President by P.L. 94-329. However, we have also included a number of provisions in the draft Order which implement legislative changes enacted by the Foreign Assistance Acts of 1973 (P.L. 93-189) and 1974 (P.L. 93-559) and by the

The Honorable

James T. Lynn, Director,

Office of Management and Budget.

- 2 -

International Development and Food Assistance Act of 1975 (P.L. 94-161). We have thus taken into account all amendments to the relevant legislation enacted since the issuance in 1972 of Executive Order 11685, the most recent general updating of the delegations of functions concerning this subject. The nature, purpose, background and effect of the provisions of the enclosed draft Order, and their relationship to pertinent laws, are explained below.

PART I. FOREIGN ASSISTANCE

This part of the draft Order amends Executive Order 10973, the basic delegation of functions vested in the President by the Foreign Assistance Act of 1961. The basic Order delegates all functions under the FAA to the Secretary of State, except those otherwise expressly delegated or expressly reserved to the President.

Delegation to the Secretary of State.

Paragraph 1 adds to the list of statutory functions delegated to the Secretary of State those under section 607 of P.L. 94-329. That provision requires the President to report to Congress substantiated instances of bribery and extortion involving U.S. firms and foreign officials. This function is closely related to the responsibilities vested in the Secretary of State by section 39 of the Arms Export Control Act concerning reports of agents' fees and other payments. Although this function is enacted as permanent law, it does not amend either the FAA or the AECA and, therefore, must be specifically delegated.

Paragraph 2 revokes a provision regarding coordination of munitions control functions under section 414 of the Mutual Security Act of 1954. That provision of law is repealed by section 212(b)(1) of P.L. 94-329. Munitions control functions, now authorized by section 38 of the AECA, are dealt with in part III of the draft Order.

- 3 -

Delegation to the Secretary of Defense.

Paragraph 3 deletes a reference to section 664(i) of the FAA, which section was repealed by section 22 (2) of P.L. 93-189.

Paragraph 4 adds to the functions on which the Secretary of Defense must consult with the Secretary of State those under sections 514(e) of the FAA. That provision, enacted by section 103 of P.L. 94-329, requires the President to report to Congress on new overseas stockpiles of defense articles, or additions to existing stockpiles, of more than \$10 million in value.

Exclusions from Delegation to the Secretary of Defense.

Paragraph 5 excludes from the functions delegated to the Secretary of Defense the following additional responsibilities, thereby causing those functions to be delegated to the Secretary of State:

(a) Those under section 502B(a)(3) of the FAA (except to the extent they relate to DOD functions). That provision, enacted by section 301(a) of P.L. 94-329, directs the President to formulate and conduct security assistance programs in a manner that will promote human rights and avoid identification of the United States with governments which deny human rights to their people. Delegation of this function to the Secretary of State is consistent with other provisions of the FAA regarding human rights, and with the Secretary of State's supervisory responsibilities for security assistance.

(b) Those under sections 504(a) and 505(d), (e), and (g) of the FAA. Section 504(a), as amended by section 101 of P.L. 94-329, authorizes the President to increase the amounts allocated for military assistance to certain countries. Allocations of funds for military assistance under section 653(a) of the FAA are made by the Secretary of State and this new allocation function should be similarly delegated. Section 505(d), as amended by section 304(a) of P.L. 94-329, requires the President to report to Congress if information is

- 4 -

received indicating a substantial violation of an international agreement regarding the use of U.S. furnished defense articles and defense services. Section 505(e), enacted by section 12(a)(3) of P.L. 93-189 and amended by section 204(b)(2) of P.L. 94-329, requires the President to observe certain conditions in considering requests for consent to third country transfers of U.S. furnished defense articles and services. This provision superseded section 9 of P.L. 91-672 under which functions regarding third country transfers had been delegated to the Secretary of State. These functions have continued to be performed by him. Section 505(g), enacted by section 302(a) of P.L. 94-329, requires the President to report to Congress on instances of discrimination by foreign governments against American citizens because of their race, religion, national origin, or sex.

(c) Those relating to consent under sections 505(a)(1) and (4) of the FAA. These provisions authorize the President to consent to disposition of United States furnished defense articles and services other than by return to the United States. The exclusion of this function from the responsibilities of the Secretary of Defense complements the delegation to the Secretary of State of responsibility for third party transfers.

Delegation to the Secretary of the Treasury.

Paragraph 6 modifies the delegation to the Secretary of the Treasury by deleting references to former section 514 of the FAA, which was repealed by section 12(a)(5) of P.L. 93-189, and to section 414 of the Mutual Security Act of 1954, repealed by section 212(b)(1) of P.L. 94-329. The deletion of reference to the former section 514 of the FAA is not intended to affect responsibilities of the Secretary of the Treasury with respect to foreign currencies owned by the United States which were obtained pursuant to this repealed provision of law.

- 5 -

This paragraph retains the Secretary of the Treasury's functions of making reports to Congress under sections 634(f) and (g) of the FAA regarding the indebtedness of foreign countries. These provisions were enacted by section 17 of P.L. 93-189 and were delegated to the Secretary of the Treasury by Executive Order 11816 of October 25, 1974 (39 F.R. 37965). In addition, it delegates to the Secretary of the Treasury the function of transmitting to Congress and the Comptroller General reports of the International Bank for Reconstruction and Development and the Asian Development Bank received under section 301(e)(3) of the FAA. This section of the FAA was added by section 9(1) of P.L. 93-189. It also delegates to the Secretary of the Treasury the function of implementing section 102(d) of the FAA with respect to international development organizations in which the United States is represented by the Secretary of the Treasury. Section 102(d), enacted by section 301 of P.L. 94-161, directs the President to endeavor to bring about the adoption of certain criteria by international development organizations. These criteria are to be developed by AID pursuant to other provisions of section 102(d).

Reservation of Functions to the President.

Subparagraphs (a) and (b) of paragraph 7 reserve to the President the following additional functions:

(a) Those under section 505(c) of the FAA. That provision requires the reduction and termination of military assistance grants to any country having sufficient wealth to enable it to maintain and equip its own military forces without undue burden to its economy. This function involves the formulation of the President's budget and is considered inappropriate for delegation.

(b) Those under sections 620(x) and 620A of the FAA. The former provision, added by section 22 of P.L. 93-559 and amended by section 403 of P.L. 94-329, authorizes the President to make determinations and certifications regarding military assistance and sales to Turkey. The latter provision, enacted by section 303 of P.L. 94-329, requires the President to terminate

- 6 -

assistance to countries which aid terrorists and authorizes him to waive this requirement on national security grounds.

(c) Those under section 481(a) of the FAA. The reference to section 481(a) conforms the Executive order to an amendment made to section 481 of the FAA by section 11(a) of P.L. 93-189. That amendment designated the former section 481 as subsection (a) and added a new subsection (b) requiring certain reports to the Congress on the International Narcotics Control Program. The submission of these periodic reports need not be reserved for the President and, in fact, the required reports have been submitted by the Department of State on the President's behalf. This change would also cause the function vested in the President by section 481(c)(2) of the FAA to be delegated to the Secretary of State. This function, added by section 504(b) of P.L. 94-329, involves a study and report to Congress on placing our narcotics control program under international organization auspices.

(d) That under section 504(a)(6) of the FAA of determining that the furnishing of sophisticated weapons systems to certain less developed countries is important to the national security. This function, enacted by section 101 of P.L. 94-329, is similar to one in existing law which, in practice, has been performed only by the President.

(e) Those under sections 505(d)(2)(A) and 505(d)(3)(A) of the FAA of determining that a country is ineligible for further assistance because it has violated an agreement on the use of United States furnished defense articles or defense services and determining that such a violation has ceased. These provisions were enacted by section 304(a) of P.L. 94-329.

(f) Those under section 662(a) of the FAA. That section, added by section 32 of P.L. 93-559, prohibits the expenditure of appropriated funds for foreign operations of the Central Intelligence Agency other than intelligence gathering unless the President

- 7 -

determines that the operation is important to the national security and provides a timely report to the Congress.

(g) Those under section 663 of the FAA. That provision authorizes the President to furnish assistance under the FAA or defense articles or services under the FMS program in exchange for raw materials and to allocate raw materials so received to any appropriate U.S. agency for stockpiling or disposal. It was added by section 32 of P.L. 93-559.

(h) Those under section 669(b)(1) of the FAA relating to waiver of the prohibition against assistance to countries which deliver or receive nuclear reprocessing or enrichment equipment, materials or technology. This provision, enacted by section 305 of P.L. 94-329, contemplates that such a waiver be made only by Executive order.

Subparagraph (c) of paragraph 7 adds a proviso to the existing reservation of the function of finding whether military assistance to a country will strengthen the security of the United States and promote world peace. This proviso continues in effect the delegation of authority to the Secretary of State to make such a finding in the context of proposed third country transfers to countries with respect to which an eligibility finding has not previously been made by the President. Similar authority is now delegated to the Secretary of State by Presidential Determination 73-10 of January 2, 1973 (38 F.R. 7211). This subparagraph complements the delegation to the Secretary of State of functions under sections 505(a)(1), (a)(4) and (e), as proposed in paragraph 5 of the draft Order.

PART II. FOREIGN MILITARY SALES

This part of the draft Order revokes Executive Order 11501, which contains the delegations of functions vested in the President by the Foreign Military Sales Act (P.L. 90-629), as amended. That Act has been renamed the "Arms Export Control Act" by P.L. 94-329,

- 8 -

and its provisions have been so extensively revised as to require substantial changes in the delegations of authority. These changes are reflected in part III of the draft Order.

PART III. ARMS EXPORT CONTROLS

This part of the draft Order delegates functions vested in the President by the Arms Export Control Act (AECA). To the extent that the provisions of the newly entitled AECA remain similar to those previously contained in the Foreign Military Sales Act, the delegations follow the basic pattern of Executive Order 11501. However, the draft Order also makes provision for the many new functions established in the recently enacted legislation. Functions not expressly delegated are reserved to the President.

Delegation of Functions.

Section 1 of the draft Order delegates functions vested in the President by specific sections of the AECA, as follows:

Eligibility - Paragraph (a) delegates to the Secretary of State functions under section 3 of the AECA, except the finding that sales to a given country will strengthen the security of the United States and promote world peace, the waiver of a suspension of eligibility because of fishing boat seizures, and the determinations regarding ineligibility because of violation of an agreement on the use of United States furnished defense articles or defense services. These specified functions are reserved to the President.

Paragraph (a) also contains a proviso to the reservation of the function of making findings of eligibility under section 3(a)(1) of the AECA. This proviso allows the Secretary of State to make such a finding in the context of a proposed third country transfer. The proviso is parallel to that set out in paragraph 7(c) of part I of the draft Order, which is limited to articles and services furnished under the FAA, and similarly complements the functions delegated

- 9 -

to the Secretary of State with respect to third country transfers.

Discrimination - Paragraph (b) delegates to the Secretary of State functions under section 5 of the AECA, which was added by section 302(b) of P.L. 94-329. These functions involve the furnishing of reports to Congress on discrimination by foreign governments against Americans on the basis of race, religion, national origin, or sex. The statute contemplates the participation of the State Department's Coordinator for Human Rights and Humanitarian Affairs in the preparation of certain of these reports.

Sales from Stock - Paragraph (c) continues the existing delegation to the Secretary of Defense of functions under section 21 of the AECA, relating to sales of defense articles and defense services from Department of Defense stocks. This paragraph excepts from the delegation functions under the final sentence of subsection (d) and under subsection (h) of section 21. These excepted functions are reserved to the President. Subsection (d), added by section 205 of P.L. 94-329, involves the extension of time for payment under sales contracts when an emergency requires a delay in order to seek legislation to finance the sale. Subsection (h), added by section 206 of P.L. 94-329, requires a certification and report to Congress for any sale that would have a significant adverse effect on the combat readiness of U.S. forces.

Procurement for Cash Sales - Paragraph (d) continues the delegation to the Secretary of Defense of authority to make sales from new procurements under section 22 of the AECA. However, the extraordinary authority in section 22(b) to approve delayed interest-free payment for such sales in emergencies is reserved to the President. This authority, as amended by section 207(b) of P.L. 94-329, is similar to that contained in section 21(d), which authority is similarly reserved to the President by paragraph (c) of this section of the draft Order.

- 10 -

Sales Credits - Paragraph (e) continues the delegation to the Secretary of Defense of authority to extend credits under section 23 of the AECA to finance the procurement of defense articles and defense services. This delegation of authority is modified, however, by a reservation to the President of authority to approve concessional interest rates as being in the national interest under section 23(2). This function was added by section 45(a)(2) of P.L. 93-559.

Guaranties - Paragraph (f) continues the delegation to the Secretary of Defense of authority to issue repayment guaranties under section 24 of the AECA to private U.S. lenders and to the Federal Financing Bank to finance military procurements.

Annual Justification - Paragraph (g) delegates to the Secretary of State authority to transmit to Congress an annual estimate and justification for the Foreign Military Sales program, as required by section 25 of the AECA. This delegation is consistent with the existing responsibility of the Secretary of State for the Congressional presentation. In recognition that information on estimated sales orders must come from the Department of Defense, and arms control impact analysis must involve the Arms Control and Disarmament Agency, the heads of those agencies are directed to assist the Secretary of State in the preparation of presentation materials. Section 25 of the AECA was added by section 209 of P.L. 94-329.

Standards and Criteria - Paragraph (h) continues without change the delegation to the Secretary of State, with concurrence from the Departments of Defense and Treasury on certain aspects, of authority to prescribe standards and criteria for credit and guaranty transactions under section 34 of the AECA.

Less Developed Countries - Paragraph (i) continues the delegation to the Secretary of State to find a less developed country ineligible for sales, credits and guaranties under section 35(a) of the AECA because it has diverted resources needed for development to unnecessary military expenditures.

- 11 -

Foreign Military Sales Reports - Paragraph (j) delegates to the Secretary of Defense responsibility for making quarterly reports to Congress under section 36(a) of the AECA of past sales, projected sales, financing for such sales, and the numbers and functions of overseas personnel. Reports containing some of this information have been submitted by the Secretary of Defense since the enactment of section 36(a) by section 45(a)(5) of P.L. 93-559. The scope of these reports has been modified by section 211(a) of P.L. 94-329.

This paragraph also delegates to the Secretary of Defense authority under section 36(b) of the Act to submit notices to Congress of proposed individual major governmental sales. This function has also been performed heretofore by the Secretary of Defense without formal delegation. The waiver of the thirty-day waiting period after submission of such a notice is reserved to the President.

Consistent with existing practice, the Secretary of Defense is required to consult with the Secretary of State in the performance of functions under this paragraph of the draft Order. The draft Order also requires consultation with ACDA in responding to requests from Congress under section 36(b)(1) of the AECA for information concerning the arms control aspects of proposed sales.

Commercial Sales Reports - Paragraph (k) delegates to the Secretary of State authority to submit quarterly reports to Congress on exports of commercially sold defense articles and defense services and on the numbers of American personnel employed overseas in implementing such exports. These reports, required by an amendment to section 36(a) of the AECA made by section 211 of P.L. 94-329, supersede the periodic reports formerly submitted by the Secretary of State under the now repealed section 414(e) of the Mutual Security Act of 1954, as amended.

In addition, this paragraph delegates to the Secretary of State responsibility for reporting to Congress quarterly on political contributions, gifts, fees, commissions and other payments reported to him under section 39 of the AECA. Such reports are required by

- 12 -

section 36(a)(8) of the AECA, as added by section 604 (a) of P.L. 94-329.

This paragraph also delegates to the Secretary of State authority for submitting notices to Congress of proposed major commercial exports under sections 36(c) and 36(d) of the AECA. The requirement for such notices was enacted by section 211 of P.L. 94-329.

Export Licenses - Paragraph (1) continues the delegation of functions regarding controls over the import and export of defense articles and defense services. Such controls have previously been exercised under section 414 of the Mutual Security Act of 1954, which is superseded by section 38 of the AECA, as added by section 212 of P.L. 94-329.

Subparagraph (1) delegates export control functions to the Secretary of State, subject to the same coordination with the Secretary of Defense as is presently required by section 105 of Executive Order 10973.

Subparagraph (2) delegates import control functions to the Secretary of the Treasury, subject to the same coordination with the Secretaries of State and Defense as is presently required by section 301(b) of Executive Order 10973.

Subparagraph (3) implements the newly enacted section 38(e) of the AECA, which makes administrative enforcement powers under the Export Administration Act also available to enforce section 38 of the AECA. This subparagraph has been included in the draft Order because the Departments of State and Commerce are discussing the possible utilization of Commerce Department compliance mechanisms to assist in implementing the administrative powers authorized by section 38 of the AECA. It makes clear that any services which may be performed by the Commerce Department relating to such enforcement powers (e.g., decisions by that Department's Appeals Board on behalf of the Secretary of State) are duly authorized.

- 13 -

Fees and Payments - Paragraph (m) delegates to the Secretary of State authority to prohibit, limit or prescribe conditions on payments made to solicit, promote or otherwise secure governmental or commercial sales of defense articles or defense services. This authority is contained in section 39(b) of the AECA, added by section 604(b) of P.L. 94-329. Other regulatory functions under section 39 are vested directly in the Secretary of State by statute. In carrying out this delegation of authority with respect to sales under section 22 of the AECA, the Secretary of State is required to consult with the Secretary of Defense in order to avoid interference in the application of the Armed Services Procurement Regulations and other Department of Defense regulations. Sales under section 22 of the AECA are to be administered by the Secretary of Defense in accordance with paragraph (d) of this section of the draft Order.

General Provisions - Paragraph (n) continues the delegation to the Secretary of Defense of authority to approve offshore procurement under section 42(c) of the FAA. In addition, it delegates to the Secretary of Defense responsibility under section 42(f) for maximizing the overseas use of contractor services, as opposed to services of U.S. military personnel. This new directive in section 42(f) of the AECA was added by section 605(b) of P.L. 94-329.

Coordination.

Section 2 of the draft Order is derived from sections 2 and 3 of Executive Order 11501. Paragraph (a) continues the requirement for consultation by the Secretaries of State and Defense with the Secretary of the Treasury, the Administrator of the Agency for International Development, and the Director of the Arms Control and Disarmament Agency. However, this paragraph is written in more general terms and is not limited to those specified agencies.

Paragraph (b) affirms the supervisory responsibilities of the Secretary of State under section 2(b) of the AECA. In addition, it expressly provides that international agreements under the Act shall be

- 14 -

negotiated, entered into and terminated by or under the authority of the Secretary of State. This provision relating to international agreements parallels the delegation to the Secretary of State under the FAA resulting from section 203(e) of Executive Order 10973, as set out in part I of the draft Order. The terminology is comparable to that contained in other Executive orders. See, e.g., section 4(a) of Executive Order 10841 (24 FR 7941).

Paragraph (c) requires the Secretary of State to ensure that the Coordinator for Human Rights and Humanitarian Affairs participate in the formulation and conduct of security assistance programs. The Coordinator, whose office is established within the Department of State by section 301(b) of P.L. 94-329, will not be an agency head to whom it would be appropriate to delegate functions directly. However, a principal purpose of P.L. 94-329 is to require the taking into account in arms export control and security assistance decisions those considerations specified in the legislation as being of particular concern to Congress. Among these, human rights issues are most prominent. The objectives of the Coordinator's participation as described in this subparagraph is derived from section 502B(a)(3) of the FAA, as enacted by section 301 of P.L. 94-329.

Reservation of Functions.

Section 3 of the draft Order is identical to section 4 of Executive Order 11501. It expressly reserves to the President those functions not expressly delegated.

Allocation of Funds.

Section 4 of the draft Order, which allocates funds under the AECA to the Secretary of Defense, is identical to section 5 of Executive Order 11501.

General Provisions.

Section 5 of the draft Order makes clear that references to the AECA in this Order shall include amendments to the Act made from time to time. This section is identical to section 6 of the Executive Order 11501.

- 15 -

The provisions of the enclosed draft Executive order have been approved by the Under Secretary of State for Security Assistance, following coordination of the views of the several agencies concerned. We hope that formal interagency clearance can be obtained on an expedited basis and the enclosed documents submitted in final form to the President at an early date.

Sincerely,

A handwritten signature in dark ink, reading "Robert J. McCloskey". The signature is written in a cursive, slightly slanted style.

Robert J. McCloskey
Assistant Secretary for
Congressional Relations

Enclosure:

Proposed Executive
Order.

EXECUTIVE ORDER

AMENDING EXECUTIVE ORDER NO. 10973, RELATING TO
ADMINISTRATION OF FOREIGN ASSISTANCE AND RELATED
FUNCTIONS; REVOKING EXECUTIVE ORDER 11501, RELATING
TO FOREIGN MILITARY SALES; AND PROVIDING FOR THE
ADMINISTRATION OF ARMS EXPORT CONTROLS

By virtue of the authority vested in me by section
621 of the Foreign Assistance Act of 1961, as amended
(22 U.S.C. 2381), and section 301 of title 3, United
States Code, and as President of the United States,
it is hereby ordered as follows:

PART I. FOREIGN ASSISTANCE

Executive Order No. 10973 of November 3, 1961 (26 F.R.
10469), as heretofore amended, is hereby further
amended as follows:

1. Section 101 is amended by striking out "and
(6)" and inserting in lieu thereof "(6) section 607 of
the International Security Assistance and Arms Export
Control Act of 1976 (90 Stat. 768; 22 U.S.C. 239a),
and (7)".

2. Section 105 is revoked.

3. Paragraph (c) of section 201 is revoked.

4. Section 202 is amended to read as follows:

"SEC. 202. REPORTS AND INFORMATION. In
carrying out the functions under sections 514(e)
and 634(b) of the Act delegated to him by sec-
tion 201 of this order, the Secretary of Defense
shall consult with the Secretary of State."

- 2 -

5. Section 203 is revised to read as follows:

"SEC. 203. EXCLUSIONS FROM DELEGATION TO SECRETARY OF DEFENSE. The following described functions conferred upon the President by the Act are excluded from the functions delegated by the provisions of section 201(a) of this order:

"(a) Those under section 502B(a) (3) of the Act, except to the extent they relate to functions under the Act administered by the Department of Defense.

"(b) Those under sections 504(a), 505(a) (introductory clause), and 505(d), (e), and (g) of the Act.

"(c) Those relating to consent under sections 505(a) (1) and (4) of the Act.

"(d) Those under sections 505(b) (1), (2) and (3) of the Act to the extent that they pertain to countries which agree to the conditions set forth therein.

"(e) Those of negotiating, concluding and terminating international agreements."

6. Section 301 is amended to read as follows:

"SEC. 301. DEPARTMENT OF THE TREASURY.

There are delegated to the Secretary of the Treasury the functions conferred upon the President by sections 102(d) (third sentence, as it relates to international development organizations in which the United States is represented

- 3 -

by the Secretary of the Treasury), 301(e)(3) (as it relates to organizations referred to in section 301 (e)(2)), 612(a) (second sentence), 634(f), and 634(g) of the Act."

7. Section 401 is amended as follows:

(a) Paragraph (a) is amended --

- (1) by inserting "505(c)" immediately after "504(b)";
- (2) by inserting "620(x), 620A" immediately after "620(d)".
- (3) by striking out "and 633(b)" and inserting in lieu thereof "633(b), 662(a), and 663(b)".

(b) Paragraph (c) is amended --

- (1) by striking out "481" and inserting in lieu thereof "481(a), 504(a)(6)";
- (2) by inserting "505(d)(2)(A), 505(d)(3)(A)" immediately after "505(b)(4),"; and
- (3) by striking out "and 634(c)" and inserting in lieu thereof "634(c), 663(a) and 669(b)(1)".

(c) Subparagraph (d)(1) is amended to read as follows:

"(d)(1) Those under section 503(a) with respect to findings: Provided, That the Secretary of State, in the implementation of the function delegated to him under

- 4 -

section 505(a)(1), (a)(4) and (e) of the Act, is authorized to find, in the case of a proposed transfer of a defense article or related training or a related defense service by a foreign country or international organization to a foreign country or international organization not otherwise eligible under section 503(a) of the Act, whether the proposed transfer will strengthen the security of the United States and promote world peace."

PART II. FOREIGN MILITARY SALES

Executive Order No. 11501 of December 22, 1969 (34 F.R. 20169), as amended, is revoked. Except to the extent they may be inconsistent with this order, all determinations, authorizations, regulations, rulings, certificates, orders, directives, contracts, agreements, and other actions made, issued or entered into with respect to any function affected by this order and not revoked, superseded or otherwise made inapplicable before the date of this order, shall continue in full force and effect until amended, modified or terminated by appropriate authority.

PART III. ARMS EXPORT CONTROLS

Section 1. DELEGATION OF FUNCTIONS. The following functions conferred upon the President by the Arms Export Control Act (22 U.S.C. 2751-2793), hereinafter referred to as "the Act", are hereby delegated as follows:

- 5 -

(a) Those under section 3 of the Act, with the exception of subsections (a)(1), (b), (c)(3) and (c)(4)(A), to the Secretary of State: Provided, That the Secretary of State, in the implementation of the functions delegated to him under sections 3(a) and (d) of the Act, is authorized to find, in the case of a proposed transfer of a defense article or related training or other defense service by a foreign country or international organization to a foreign country or international organization not otherwise eligible under section 3(a)(1) of the Act, whether the proposed transfer will strengthen the security of the United States and promote world peace.

(b) Those under section 5 to the Secretary of State.

(c) Those under section 21 of the Act, with the exception of subsections (d) (final sentence) and (h), to the Secretary of Defense.

(d) Those under section 22(a) of the Act to the Secretary of Defense.

(e) Those under section 23 of the Act, with the exception of paragraph (2) of that section, to the Secretary of Defense.

(f) Those under section 24 of the Act to the Secretary of Defense.

(g) Those under section 25 of the Act to the Secretary of State. The Secretary of Defense and the Director of the Arms Control and Disarmament Agency, within their respective areas of responsibility, shall

- 6 -

assist the Secretary of State in the preparation of materials for presentation to the Congress under that section.

(h) Those under section 34 of the Act to the Secretary of State. To the extent the standards and criteria for credit and guaranty transactions are based upon national security and financial policies, the Secretary of State shall obtain the prior concurrence of the Secretary of Defense and the Secretary of the Treasury, respectively.

(i) Those under section 35(a) of the Act to the Secretary of State.

(j) Those under sections 36(a) and 36(b)(1) of the Act, except subsections (a)(4), (a)(7) (as it relates to commercial exports), (a)(8) and (b)(1) (with respect to certification of an emergency), to the Secretary of Defense. The Secretary of Defense, in the implementation of the functions delegated to him under sections 36(a) and (b)(1) shall consult with the Secretary of State, and in the implementation of the functions delegated to him by subparagraphs (D) and (I) of section 36(b)(1) shall also consult with the Director of the Arms Control and Disarmament Agency.

(k) Those under sections 36(a)(4), 36(a)(7) (as it relates to commercial exports), 36(a)(8), 36(c) and 36(d) of the Act to the Secretary of State.

(l) Those under section 38 of the Act --

- 7 -

(1) to the Secretary of State, except as otherwise provided in this paragraph. Designations, including changes in designations, by the Secretary of State of items or categories of items which shall be considered as defense articles and defense services subject to export control under section 38 shall have the concurrence of the Secretary of Defense.

(2) to the Secretary of the Treasury, to the extent they relate to the control of the import of defense articles and defense services. In carrying out such functions, the Secretary of the Treasury shall be guided by the views of the Secretary of State on matters affecting world peace, and the external security and foreign policy of the United States. Designations, including changes in designations, by the Secretary of the Treasury of items or categories of items which shall be considered as defense articles and defense services subject to import control under section 38 shall have the concurrence of the Secretary of State and the Secretary of Defense.

(3) to the Secretary of Commerce, or his designee, to carry out on behalf of the Secretary of State, to the extent such functions involve section 38(e) and are agreed to by the Secretary of State and the Secretary of Commerce.

- 8 -

(m) Those under section 39(b) of the Act to the Secretary of State. In carrying out such functions, the Secretary of State shall consult with the Secretary of Defense as may be necessary to avoid interference in the application of Department of Defense regulations to sales made under section 22 of the Act.

(n) Those under sections 42(c) and 42(f) of the Act to the Secretary of Defense.

SEC. 2. COORDINATION. (a) In addition to the specific provisions of section 1 of this order regarding consultation and concurrence requirements, the Secretaries of State and Defense, in carrying out the functions delegated to them under this order, shall consult with each other and with the heads of other agencies of the United States Government, including the Secretary of the Treasury, the Administrator of the Agency for International Development, and the Director of the Arms Control and Disarmament Agency on matters pertaining to their responsibilities.

(b) In accordance with section 2(b) of the Act, the performance of functions under the Act shall be under the continuous supervision and general direction of the Secretary of State, whose responsibilities shall include, but not be limited to, determining whether a sale or export shall be made or performed, and the amount thereof. International agreements under the Act shall be negotiated, entered into and terminated by or under the authority of the Secretary of State.

- 9 -

(c) The Secretary of State shall ensure that the Coordinator for Human Rights and Humanitarian Affairs participates in the carrying out of functions under the Act and under the Foreign Assistance Act of 1961, by assisting in the formulation and conduct of security assistance and arms export control policies, programs and activities which will promote and advance human rights and fundamental freedoms, and the avoidance of United States identification, through such policies, programs and activities, with governments which deny to their people internationally recognized human rights and fundamental freedoms.

SEC. 3. RESERVATION OF FUNCTIONS. All functions conferred upon the President by the Act that are not delegated by the provisions of this order are hereby reserved to the President.

SEC. 4. ALLOCATION OF FUNDS. Funds appropriated to the President for carrying out the Act shall be deemed to be allocated to the Secretary of Defense without any further action of the President.

SEC. 5. GENERAL PROVISIONS. References in this order to the provisions of the Act shall be deemed to include references thereto, respectively, as amended from time to time.

The White House,

, 1976